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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/577,922	05/24/2000	Toru Mineyama	450100-02515	4471

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FROMMER LAWRENCE & HAUG
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NEW YORK, NY 10151

EXAMINER

HOYE, MICHAEL W

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 12/03/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/577,922

Applicant(s)

MINEYAMA, TORU

Examiner

Michael W. Hoye

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on 9/08/03 have been fully considered but they are not persuasive.

Regarding amended independent claim 1, the Applicant argues that, “Herz as applied by the Examiner does not specifically disclose [the following:]

“**virtual channel guide creating means for creating** on the basis of said user profile created by said user profile creating means and said program information extracted by said program extracting means **a virtual channel guide** in which programs of said plurality of real channels are selectively located.” [Emphasis added by Applicant.]”

In response, the Examiner respectfully disagrees with the applicant because the Herz reference clearly teaches “virtual channel guide creating means for creating...a virtual channel guide...” as described in col. 45, lines 34-49, where the processor 906 (Fig. 9) takes the agreement matrix that was determined and stored in memory 908, and modifies the electronic program or display guide 914 to include fields for the “virtual” channels, then the customer may select a desired virtual channel from a listing of the programs available on the virtual channels using the customer’s remote control unit.

Claim Rejections - 35 USC § 102

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2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 6, 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Herz et al (USPN 5,758,257), cited by the examiner.

As to claim 1, note the Herz et al reference which discloses a receiver that receives broadcasts and program information. The Herz et al reference, hereafter referred to as Herz, discloses the claimed “receiving means for receiving a digital broadcast signal” as met by set top multimedia terminal 620 (Fig. 10), which may receive digital broadcast signals (also see col. 25, line 4 – digital transmission). The claimed “selecting means for selecting a predetermined real channel from a plurality of real channels” is met as shown within the set top multimedia terminal 620, as tuner 1002, (see Fig. 10, also see Fig. 9, channel selector 912). The claimed “program information extracting means” is met by data receiver 1004 in Fig. 10 (also see Fig. 9, available/authorized program list 902), where the data receiver extracts the program information from the plurality of real channels in the digital broadcast signal and sends the program information to microprocessor 1005 (or processor 906 in Fig. 9). The claimed “user profile creating means” is met by the microprocessor 1006 and memory 1012 in Fig. 10 (and/or agreement matrix 906, time of day/mood indicator 910, and processor 906 in Fig. 9), where a user profile may be established by the viewer entering various conditions (col. 4, line 18 – col. 5, line 18 and col. 46, lines 43-61), in addition, a “user profile” may be developed from the program information that has been stored from the user’s viewing history/habits or programs

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actually watched by the user (col. 6, lines 35-59 and col. 46, lines 43-61, also see col. 40, line 32 – col. 41, line 14). The claimed “user profile in which program information received at every time unit of a day is accumulated as user profile information” is met by the user’s viewing history/habits, which inherently accumulates program information at every time unit (also see col. 22, lines 22-23 – referring to time slots). The claimed “virtual channel guide creating means for creating...a virtual channel guide...” is met by processor 906 in Fig. 9 (see col. 45, lines 34-55) and/or microprocessor 1006 in Fig 10 (see col. 46, lines 43-59), which creates a designated number of “virtual” channels for the customer’s consideration at any given time based on the agreement matrix or viewing history/habits or “user profile” and where the processor 906 (Fig. 9 and col. 45, lines 34-49) takes the agreement matrix that was determined and stored in memory 908, and modifies the electronic program or display guide 914 to include fields for the “virtual” channels, then the customer may select a desired virtual channel from a listing of the programs available on the virtual channels using the customer’s remote control unit, whereby the programs are presented to the user on the customer’s television screen. The claimed “priority program setting means for setting a priority program” is met by acceptable ranges or by ratings with a scale of 10 in which 10 means the greatest satisfaction (see col. 12, lines 14-25), and the claimed “virtual channel guide creating means refers to said priority program set by said priority program setting means” is met by the processor as described above selects the “priority program set” by referring to the stored customer profiles including the characteristics and weighted values (col. 45, lines 34-55, also see col. 4, lines 53-58 and col. 46, lines 50-54).

As to claim 2, the claimed display means for displaying said virtual channel guide created by said virtual channel guide creating means is met by the TV as disclosed in Figs. 9 and 10 and

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a program guide that displays the “virtual” channel information which may be selected by the user is sent to the TV (col. 45, lines 36-55 and col. 46, lines 54-61).

As to claim 3, the claimed time zone setting means for setting a time zone in which said virtual channel is created is met by the time of day settings received from the head end or as input by the customer and stored in memory (see col. 45, lines 24-30 and col. 45, line 56 – col. 46, line 2).

As to claim 4, the claimed said user profile creating means creates a user profile of every predetermined period and constantly holds user profiles of a constant number is met by a constant which can vary in accordance with the desired accuracy for the profiles (see col. 6, lines 56-59 and col. 7, lines 6-35).

As to claim 6, the claimed said user profile accumulates at least a title is met by the content profiles with the various program titles as shown in col. 21, lines 1-29, the claimed accumulating a category is met by col. 4, lines 59-67, and the claimed accumulating a key word is met by col. 13, lines 10-11.

As to claim 7, the claimed virtual channel guide creating means uses user profiles located ahead of and behind said predetermined unit time if user profile information corresponding to said predetermined unit time is not accumulated then when a program of said real channel corresponding to a predetermined unit time is selected is met by the inherency of the customer profiles that are created and updated in the set top multimedia terminal of Herz. In the Herz reference, if a customer profile has not been determined for a particular time of day, the customer profile may be developed using other relevance feedback techniques, such as initial customer preference profiles, other programs viewed in accordance with time of day, time of the week,

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and/or customer mood, and various other characteristics may be used as well from the customer's preferences for viewing programs and viewing history (see col. 4, lines 22 – col. 5, line 13, col. 25, line 65 – col. 26, line 8, and col. 26, lines 40-57).

As to claim 10, the claimed channel control means for controlling said selecting means in a manner that said real channel selected from said virtual channel guide created by said virtual channel guide creating means are received sequentially is met by the set top terminal creating a electronic program or display guide with “virtual channels” which if selected by the user will display the most preferred video program on the user's television during the current time frame, after the program has completed the virtual channel will remain on the same channel or tune to a different channel based on the best match to the customer's profile, so the programs are received sequentially on the “virtual channel” and preferably the viewer will not have to change channels or “channel surf” at all or very frequently since the programs are received sequentially (see col. 3, lines 3-16, col. 4, lines 41-43 and 53-58, and col. 45, lines 34-49).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al (5,758,257), in view of Hodge et al (USPN 6,564,381), both cited by the examiner.

As to claim 5, the Herz et al reference discloses a receiver wherein said user profile creating means creates a weekday user profile from a viewing history of programs viewed on weekdays or "time of the week" (see col. 4, lines 53-63, col. 5, lines 23-33, and col. 45, lines 24-27). The Herz et al reference does not explicitly disclose creating a holiday user profile from a viewing history of programs viewed on holidays. The Hodge et al reference discloses the use of holiday profiles (see col. 7, line 1 – col. 8, line 6 and col. 9, lines 22-24). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the receiver that creates a weekday user profile as disclosed by Herz et al with the holiday user profile as taught by Hodge et al. One of ordinary skill in the art would have been led to make such a modification since the additional use of a holiday user profile for creating "virtual" channels would be beneficial for users who are likely to view specific programs or movies that occur on holidays.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael W. Hoyer whose telephone number is (703) 305-6954. The examiner can normally be reached on Monday to Friday from 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller, can be reached at (703) 305-4795.

Any response to this action should be mailed to:

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Arlington, Virginia 22202


Or faxed to: (703) 872-9306

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Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,
Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding
should be directed to customer service whose telephone number is **(703) 308-HELP**.

Michael W. Hoyer
December 1, 2003



JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600